

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS: 97-0402 AGI

Individual Income Tax

Calendar Years: 1989, 1990, 1991, 1992, 1993, 1994, And 1995

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ISSUES

I. **Adjusted Gross Income Tax.** – Imposition

Authority: 6-8.1-5-1(a)

The taxpayer protests the "Best Information Available" assessment.

II. **Penalty.** – Fraudulent intent to evade tax.

Authority: 6-8.1-10-4

The taxpayer protests the imposition of the 100% fraud penalty.

STATEMENT OF FACTS

This Letter of Finding is in regard to the protest of the individual income tax audit performed by the Department for the years 1989 through 1995.

The taxpayer is an individual who owns and operates a used car dealership on the west side of Indianapolis.

I. **Adjusted Gross Income Tax.** – Imposition

DISCUSSION

The taxpayer protests the "Best Information Available" assessment. The Department calculated a "Best Information Available" assessment as the taxpayer was unable to

provide records. The assessment was adjusted gross income that was derived from the federal returns from the taxpayer's company. The income figure consisted of service expense, labor cost, the paydown of mortgages, and capital gains from the sale of real estate from the company federal returns.

The taxpayer protests the income computation by the Department as the income is materially different from the taxpayer's returns. In response, the Department states the service expense and labor cost from the company federal returns belong to the taxpayer as the taxpayer testified that there were no employees employed by the taxpayers' company. As the company had no employees, any labor cost would attribute to the owner as it is the owner who provided the labor (i.e. service). In addition, the paydown of mortgages and the capital gains on real estate owned by the taxpayer denoted on the company income tax returns represents constructive receipt of income to the taxpayer. Thus, service expense, labor cost, mortgage paydown, and capital gains from real estate denoted on the taxpayer's federal returns are all income items to the taxpayer.

The taxpayer's income tax return was not accepted as the income tax returns were not realistic and there were no records to substantiate the taxpayer's returns. The taxpayer said there were no records as the taxpayer's records were kept at the offices of the taxpayer's company, and, the records at the taxpayer's company were destroyed in a fire and two burglaries. There is no casualty report for the fire. There are police reports for the burglaries, but there is no documentation that records were destroyed. To conclude, the Department does not feel the taxpayer has provided a reliable tax return.

Indiana Code 6-8.1-5-1 (a) states, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail."

As there were no taxpayer records available, the Department relied on the taxpayer's company federal tax returns to compute the taxpayer's adjusted gross income.

FINDING

The taxpayer's protest is denied. The Department finds the taxpayer's company federal income tax returns to be a good source from which to calculate the "Best Information Available" assessment.

II. **Penalty.** - Fraudulent intent to evade tax.

DISCUSSION

The taxpayer protests the imposition of the 100% fraud penalty. The Department assessed the penalty based on the fact the “Best Information Available” net income calculation was materially different from the income reported by the taxpayer on the income tax returns.

The taxpayer argues that as a result of a fire and two burglaries, the taxpayer did not have the proper records that could compute income.

The Department finds that there are no insurance papers that substantiate the fire loss. There are police reports that substantiate the burglaries, but there is no documentation that records were destroyed.

Indiana Code 6-8.1-10-4 (a) & (b) state, “If a person fails to file a return or make a full tax payment with that return with the fraudulent intent to evade the tax, the person is subject to a penalty . . . The amount of the penalty imposed for a fraudulent failure . . . is one hundred percent (100%) . . .”

The Department agrees that the lack of records would result in inaccurate reporting. The Department holds that there is insufficient evidence substantiating the claim that the taxpayer fraudulently evaded his tax obligation.

FINDING

The taxpayer’s protest is sustained. The Department has not proven the taxpayer fraudulently intended to evade tax. However, the 10% negligence penalty is imposed.